

### **REMARKS**

Reconsideration of the subject patent application in light of the present Amendment and Remarks is respectfully requested.

This amendment has been made to put this application in condition for immediate allowance. No new issues have been raised which require a further search.

Claims 1, and 23-25 are pending. Claims 4 to 7, 10-22, and 26 remain withdrawn from consideration without prejudice to Applicant's right to pursue the subject matter of these claims in a future continuation application.

Claim 1 and 23 to 25 have been amended to more particularly point out and distinctly claim applicants' invention by specifying the components of the composition. Also, the typographical error of claim 1 has been corrected by replacing the word "oxalsuccinate" with the word "oxalosuccinate" and "oxalacetate" with the word "oxaloacetate" as suggested by the Examiner in the final Office Action dated 10/08/04 at page 2, lines 3 to 4. Applicants have canceled claims 2-3, and 8-9. No new matter has been added.

Entry of this Amendment is respectfully requested. Upon entry of the amendment, Claims 1, and 23 to 25 will be pending.

#### **Rejection under 35 U.S.C. § 112, first paragraph**

Claims 1 and 23-25 have been rejected under 35 U.S.C. §112, first paragraph as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors at the time the application was filed had possession of the claimed invention.. Applicants have amended claims 1 and 23 – 25 to more particularly point out and distinctly claim applicant's invention by specifying the components of the composition. The claimed range of each component administered daily is fully supported by the disclosure of the current application. (See page 5 lines 29 to 34 and Table 6.)

#### **Rejection under 35 U.S.C. § 112, second paragraph**

Claims 1 and 23-25 have been rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.. Applicants have amended claims 1 and 23 – 25 to clarify the means of administration of the claimed compositions and clarify that which the applicant claims as the invention.

**Rejection under 35 U.S.C. § 102(b)**

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by mother nature.com or Whole Health Discount Center which claims 1000 mg of calcium and magnesium citrate, which is outside of the claimed range of this invention. Waterman teaches a composition of L-malic acid, fumaric acid, aspartic acid, citric acid, succinic acid, lactic acid, pyruvic acid, fat, and flavor enhancers. To anticipate the invention, the reference must teach every limitation of the claimed invention. Waterman does not teach a composition that contains all of the limitations of the claimed compositions as amended since it does not contain all of the components of the claimed invention. Thus, Waterman does not anticipate the claims of the present invention.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of pending Claim 1 under 35 U.S.C. § 102(b).

**CONCLUSION**

Applicant believes that this Application is now in condition for allowance and such action is respectfully requested. If for any reason the Examiner believes that contact with the Applicant's attorney would advance the prosecution of this application, he is invited to contact the undersigned at the number given below.

**Date: January 10, 2004**

Respectfully Submitted,  
KENYON & KENYON

A handwritten signature in black ink, appearing to read "Serena I. Farquharson", written over a horizontal line.

Serena I. Farquharson  
Reg. No. 54,093

KENYON & KENYON  
One Broadway  
New York, NY 10004  
Tel: (212) 425-7200  
Fax: (212) 425-5288